

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 23.01.2019

Judgment delivered on 28 .11 .2019

CRR No. 11 of 2002

- D.K.Raju S/o Bharat, aged About 59 Years Sector-2, Bhilai, Tahsil and District-Durg, Chhattisgarh

---- Applicant

Versus

1. Gauraiya @ Ganesh, S/o Ballaiya @ Balkrishna, S/o Amaru, aged 29 years,
2. Ballaiya @ Balkrishna, S/o Amaru, aged 60 years,
3. Sheela @ Sheenu, S/o Ramraju, aged 32 years,
4. Mirramma, W/o Ramraju, aged 58 years,
5. Leelawati @ Baby, W/o M. Ramkrishna, aged 33 years,
6. Manikkyam, W/o Ballaiya, aged 52 years,
All R/o Qr. No. 1A, Street No.3, Sector-6, P.S. Bhilainagar, District Durg,
Chhattisgarh
7. State of Chhattisgarh, through D. M. Durg.

---- Respondent/s

For Applicant/s	-	Shri Arvind Dubey and Shri Vikash Shrivastava, Advocates.
For Respondent/State	-	Smt. M. Asha, PL.

CRA No. 1166 of 2001

- Smt. Manikyam W/o Balaiah @ Bala Krishna, aged about 52 years, R/o Sector-7, Qr. No.5 – B Street No.31-B, Bhilai, District Durg (CG)

--- Appellant/s

Versus

- State Of Chhattisgarh through P.S. Bhilai Nagar, Bhilai, District Durg (CG)

---- Respondent

CRA No. 1167 of 2001

1. Gouraiya @ Ganesh, S/o Balaiya @ Balkrishna Telgu, aged about 29 years,
2. Balaiya @ Balkrishna S/o Amaru aged about 60 years,
Both R/o Qr. No.5-B, Street No.31-B, Sector-7, Bhilai, District Durg (CG)

---- Appellant/s

Versus

- State of Chhattisgarh through P.S. Bhilai Nagar, Bhilai, District Durg (CG)

---- Respondent

For Appellant/s	-	Shri Adil Minhaj and Shri Deepak Jain, Advocates.
For Respondent/State	-	Smt. M. Asha, PL .

Hon'ble (Smt.) Justice Vimla Singh Kapoor

CAV Judgment

Since all the aforementioned cases (revision and the appeals) arise out of the same judgment dated 28.11.2001 passed in Sessions Trial No.319/1999, they are disposed of by this common judgment.

2. It is pertinent to specify that the revision has been filed by the father of the deceased against acquittal of some of the accused persons of all the charges and of some of a particular charge whereas the appeals have been preferred by the accused/appellants against their conviction under Sections 498-A and/or 306 IPC.

3. Accused Gouraiya @ Ganesh and the deceased namely Dhanlakshmi were married in the year 1991. Other accused/appellants are the mother-in-law and father-in-law of the deceased who died in the year 1999 on account of alleged subjection to cruelty for demand of Rs.20,000, scooter and gold ornaments, and was also abetted for ending her life by hanging.

4. The allegation made by the father of the deceased by way of written complaint (Ex.P-1) is that after marriage the accused persons started demanding a cash of Rs.20,000, scooter and the

gold ornaments and when the demand remained unfulfilled they started resorting to cruelty, both mental and physical. It is also alleged that the accused/appellants always use to asked the deceased to get her husband separated by way of divorce and manage his marriage with some other girl. All this ultimately made the deceased mentally unstable and embrace death by hanging. It is also alleged that when her brother had come to her matrimonial house, the accused/appellants also misbehaved and asked him to get out of their house. On the basis of this written complaint FIR (Ex.P-7) was recorded against all the accused persons followed by investigation being set in motion which resulted in framing of charge against all of them under Sections 498-A and 306/149 IPC.

5. Learned Court below by judgment impugned convicted the mother-in-law of the deceased (accused Manikkyam) under Sections 498-A and 306 IPC and sentenced to undergo RI for 2 years and 6 months with fine of Rs.2000 under Section 498-A and RI for 7 years with fine of Rs.2000 under Section 306 IPC, plus default stipulations whereas accused appellants Gouraiya and Balaiya have been convicted only under Section 498-A IPC by imposition of sentence of RI for 2 years and 6 months with fine of Rs.2000, plus default stipulations.

6. Counsel for the accused/appellants submit that though there is no evidence to attract the ingredients of abetment contained in Section 107 IPC, the accused/appellant Manikkyam has been convicted under Section 306 IPC which is bad in law. They further submit that If the letters written by the deceased marked as Ex.

P-10 to Ex.P-12 are seen as a whole, they do not disclose the commission of offence under Section 498-A IPC because no demand of dowry has been directly attributed by her and thus the conviction of the accused/appellants under Section 498-A IPC is bad in law because the witnesses making such allegations are none else but the close relatives of the deceased who are bound to state against the accused/appellants to satisfy their anger resulted after the death of their beloved sibling.

7. State counsel however supports the judgment impugned to be strictly in accordance with the evidence on record and there is no illegality or infirmity in the same warranting any interference in this appeal.

8. Counsel for the applicant appearing in Criminal revision No. 11/2002 attacks the acquittal of accused Sheela, Miramma and Lilawati of all the charges levelled against them holding the same to be contrary to the evidence on record. Acquittal of appellants Gouraiya @ Ganesh and Balaiya of the charge under Section 306 IPC is also seriously attacked by the applicant in criminal revision.

9. This Court has seen the evidence of all the witnesses in particular that of parents and brother of the deceased being PW-1, PW-2 and PW-8 who all have stated unequivocally that after marriage of the deceased, the accused/appellants used to demand an amount of Rs.20,000, scooter, gold ornaments etc. and also subjected her to mental and physical cruelty when the demand could not be fulfilled. After looking into the allegations made by the parents and brother of the deceased, this Court feels it surprising

as to why the matter was not reported till 9 years after marriage and why her parents waited for this long period after her death to open their mouth against the accused/appellants. If the deceased was being really subjected to cruelty for demand of dowry, the report must have been lodged against the accused persons at the first instance itself and they should not have waited for her tragic and untimely end. The letters marked as Ex.P-10 to Ex.P-12 purportedly written by the deceased do not pin-pointedly disclose as to at what point of time, what demand of dowry was made by the accused/appellants and how she was instigated by them to end her life. Even the so called suicide note written over a small slip marked as Ex.P-9 does not specifically point out as to what act of accused Manikkyam (mother-in-law of the deceased) impelled her for that unspecified work. The suicide note does not at all conclusively go to show that her mother-in-law, and the neighbour (not made accused) were instrumental in abetting her of committing suicide by hanging to a ceiling fan. Not even a single instance has been proved by the prosecution which could have established the abetment on the part of the accused/appellants instigating the deceased to put an end to her life as contained in Section 107 IPC. What exactly drove the deceased to end her precious life must have been within her exclusive knowledge but for that the husband and family members cannot be roped in simply because the incident took place in her matrimonial house. The prosecution has not established beyond reasonable doubt that deceased committed suicide after being abetted by the accused/appellants. Before recording conviction under Section 306 IPC the

Court must be satisfied that the accused persons by their conduct created such an inhumane situation or subjected the deceased to such cruelty which amount to abetment and led to the death as a suicide. Unfortunately, this requirement of law could not be satisfied by the prosecution. Thus the acquittal of accused/appellants Gouraiya and Balaiya of the charge under Section 306 IPC is well reasoned. Since no dowry demand and resultant cruelty has been proved by the prosecution, their conviction under Section 498-A IPC is also set aside. At the same time, conviction of accused Manikkyam under Section 306 IPC and 498-A IPC cannot be made to stand as the prosecution has utterly failed to prove as to how, when and in what manner she subjected the deceased to cruelty or instigated her to end her life. Simply the so called suicide note (Ex.P-9) is not enough for this purpose because it does not conclusively spell out as to what the mother-in-law did which drove her to take this extreme step. In other words, the suicide note does not clarify that she was going to commit suicide after being instigated by her mother-in-law and the neighbour who has not even been made accused, in any manner whatsoever.

10. In view of above, acquittal of accused/appellants Gouraiya and Balaiya of the charge under section 306 IPC does not suffer from any illegality and it is hereby maintained. However, the conviction of these two accused/appellants under Section 498-A being contrary to the material on record is liable to be set aside and it is hereby done so. Furthermore, the conviction of accused Manikkyam under Sections 498-A and 306 IPC is also not based on

the proper appreciation of the evidence on record and being so the same is liable to be set aside by acquitting her of the charges levelled against her.

11. In the result both the criminal appeals are hereby allowed and the judgment impugned convicting and sentencing the accused/appellants as described above is hereby set aside.

12. However, the criminal revision No.11/2002 preferred against the acquittal of three accused namely Sheela, Mirmma and Leelawati of all the charges levelled against them is without any substance and it is hereby dismissed. Even the acquittal of accused/appellants Gouraiya and Balaiya of the charge under Section 306-IPC does not appear to be at fault and being so it is also being affirmed accordingly. Thus the revision being without any substance is liable to be dismissed and is hereby dismissed.

Sd/-
(Vimla Singh Kapoor)
Judge

Jyotishi/ajay.